

## **Terms and Conditions for Partners**

General contractual conditions for participation in the BlueSpice partner program

Version 3

Valid from: May 1, 2021

## 1. General and Definitions

- a) Hallo Welt! GmbH (**Hallo Welt!**) is an IT company based in Regensburg, Germany, and producer of the open source wiki software BlueSpice MediaWiki (**BlueSpice**). Hallo Welt! offers business customers (**customer**) subscription contracts (**subscription**) and supplementary services (**services**) for its BlueSpice software.
- b) **BlueSpice** refers to the software compiled, developed and distributed under this name, including all patches, updates and upgrades, which can be supplied or obtained directly or indirectly from Hallo Welt! The compilation of the software provided under the name BlueSpice is listed in a publicly accessible [software catalog](#). All associated rights and obligations are governed by a [subscription contract](#) concluded with the partner.
- c) **Customers** in the sense of these Terms and Conditions are only those who are end customers ("End User") within the market, who purchase BlueSpice software and services only for their own use and not for resale and redistribution, and who are additionally entrepreneurs (according to § 14 BGB (=German Civil Code)). Entrepreneur is according to § 14 Abs. 1 BGB a natural or legal person or a legally responsible partnership, which acts in practice of its commercial or independent vocational activity with conclusion of a legal transaction. A partnership with legal capacity is a partnership endowed with the capacity to acquire rights and incur liabilities, Section 14 (2) BGB.
- d) The present Terms and Conditions for Partners together with the BlueSpice Partner Contract and its annexes (or with another partnership contract concluded in writing) (**partner contract**) regulate the participation of the business partner (**partner**) in the BlueSpice partner program (**partner program**). The purpose of this cooperation is the takeover of sales activities with regard to the conclusion of subscription contracts by the partner. While Hallo Welt! itself has concluded a subscription contract or a contract for the provision of services with its customers up to now, the partner will conclude subscription contracts and contracts for services with the customers itself in the future.
- e) The employees of Hallo Welt! do not enter into an employment relationship with the partner or its customers.
- f) Conflicting terms and conditions of the partner are expressly rejected. These shall only be recognized if they have been expressly agreed in writing.

## 2. Subject matter of the contract

- a) The subject of these Terms and Conditions is the distribution of subscriptions and services of Hallo Welt! to customers via the partner within the framework of the partner program. This is intended to promote the distribution and further development of BlueSpice and the complementary services, to increase the satisfaction of BlueSpice's customers and to expand the expertise and resources of the partner.
- b) Hallo Welt! shall provide the partner with subscriptions in accordance with the provisions of the subscription agreement available at [bluespice.com](https://bluespice.com), which is hereby expressly made the subject of these Terms and Conditions, which the partner can then provide to customers in its own name and for its own account and grant them the necessary rights of

use. The partner thereby acts towards Hallo Welt! as a customer of the subscription contract. In relation to the customers, however, the partner effectively acts as the provider of the subscription contract. The partner will therefore independently provide the services, which Hallo Welt! provides on the basis of the subscription or service contract, to the customer. The partner is the contact and contractual partner of the customer.

- c) The partner purchases for this purpose from Hallo Welt! subscriptions according to the terms of the subscription contract or services. For this purpose, the partner requests an offer from Hallo Welt! for the conclusion of a subscription or service contract. Hallo Welt! will then send the partner a corresponding offer. The contract for a specific subscription or a specific service comes into effect when the partner accepts the offer from Hallo Welt! in text form.
- d) According to the partner contract and these Terms and Conditions, Hallo Welt! therefore grants the partner the necessary rights so that the partner can offer the subscriptions to its customers. As far as in these conditions or in the partner contract deviating regulations of the subscription contract are thus met, the regulations met here take precedence over those in the subscription contract.
- e) The partner thus initially acquires subscriptions and services from Hallo Welt! and then sells these on to the customers. If the partner sells subscriptions to the customers, it will conclude an agreement with these customers that includes all provisions of the subscription agreement. The partner will also enter into an agreement with its customers to the effect that the customers agree to Hallo Welt! taking over the subscription agreements concluded by the partner with the customers as soon as the partner contract is terminated.
- f) The partner will not enter into any further agreements or obligations of any kind to the detriment of Hallo Welt! However, the partner is entitled to provide even more services to the customer.
- g) The partner program is not an exclusivity relationship. Both parties are free to enter into further agreements with other companies.

### **3. Conclusion of contract, acceptance and partner status**

- a) This clause regulates the conclusion of the partner contract as such between Hallo Welt! and the partner as well as the contents of the partner status. The partnership begins with the conclusion of the partner contract.
- b) The transmission of the partner contract including these Terms and Conditions does not yet represent a legally binding offer by Hallo Welt! but is merely an invitation to the partner to make an offer to Hallo Welt! in this form. The partner can make a binding offer himself and apply for his participation in the partner program by sending a signed version of the partner contract to Hallo Welt! Hallo Welt! accepts the application by countersigning the contract. In the case of new partners who have not previously maintained a cooperation agreement with Hallo Welt!, Hallo Welt! accepts the partner contract subject to the condition precedent that the partner fulfills his obligation according to lit. c). If the condition precedent occurs, the contract becomes effective retroactively to the date of signing.

- c) New partners undertake to participate in the BlueSpice training program for partners within 90 days after signing of the contract by them and to complete this with certification. Only with the certification the partner is accepted and the partner contract becomes effective (lit. b). Furthermore, he receives his official partner status at Hallo Welt! If the partner does not complete the training program within this period or does not complete it successfully, the contract remains ineffective.
- d) If the partner had already been in a cooperation relationship with Hallo Welt! for several years prior to the conclusion of the partner contract, partner status is assumed for the first contract year of the partner program.
- e) A partner with an official partner status takes part in the partner program of Hallo Welt! with discount system, which is described in the annexes of the partner contract.
- f) The partner must permanently comply with the conditions for partnership agreed in the partner contract. For this purpose Hallo Welt! can demand a recertification at any time.
- g) Before the beginning of a new contract year, Hallo Welt! evaluates the partner status on the basis of the existing certifications and the turnover of the previous year. For the classification of the partner, the tables contained in the annexes to the partner contract shall apply.
- h) If the partner's turnover within a contract year is below the minimum turnover according to the above tables, his partner level will be classified in the discount system according to the turnover or the partner will lose his partner status and thus also all services and benefits associated with the partner status, such as a free subscription for internal operation.

#### 4. Cooperation of the partner

- a) The partner may host the software obtained via subscriptions for the customer (Software as a Service), but will not act as an official BlueSpice hoster on the market without this having been contractually agreed with Hallo Welt!.
- b) The partner undertakes to draw the customer's attention to the End User License Agreement ("EULA") for BlueSpice and to make the respective current EULA available to the customer together with its other contractual documents upon conclusion of a contract and prior to the customer's contractual declaration. The partner shall also point out to the customers that the software may not be used without conclusion of the EULA. The respective current EULA is available on the [BlueSpice product website](#).
- c) If Hallo Welt! issues so-called test licenses to the partner for customer acquisition during the term of the partner program and grants access to non-production or test systems, these are not intended for resale (also referred to as "NFR" "Not for Resale"). The free customer trial systems are also only free for a certain period of time. After their expiry, the system is subject to a charge. In this respect, the partner undertakes to,
  - a. to use the free customer test system exclusively for the agreed term and, should he exceed this term, to pay the corresponding accruing remuneration to Hallo Welt!;

- b. to purchase the corresponding subscriptions according to the respective terms and conditions of Hallo Welt! and to pay the corresponding fee for the accruing periods, provided that the partner resells the Hallo Welt! services mentioned in §2, lit. d) or uses its access to these systems for its own internal or productive use and this is not expressly permitted in the corresponding program annex.
- d) The partner agrees that his company name, official address and telephone number, as well as website addresses, may be listed in advertising and promotional materials, and websites of Hallo Welt! as determined by Hallo Welt! at its sole discretion.
- e) During the term of this contract Hallo Welt! provides the partner with advertising materials for subscriptions and services. He may not distribute any of the advertising materials created by him in relation to Hallo Welt! or BlueSpice without prior written permission from Hallo Welt!
- f) The partner may use subcontractors or affiliated companies only with the prior express written consent of Hallo Welt!.
- g) If the partner purchases subscriptions and services from Hallo Welt!, it must keep adequate written records of the partner's use and distribution of the subscriptions and services, as well as business activities related to the partner program, during the term of the agreement and for at least two (2) years thereafter.
- h) Hallo Welt! is entitled to check the records at its own expense to determine whether the partner is complying with this contract. This verification may take the form of requests for information, documents or records (to which the partner will respond promptly), on-site visits (for which the partner must provide Hallo Welt! with the necessary access), or both. If, however, such verification reveals that the partner has paid compensation that is at least 5% less than what is owed, the partner must bear the cost of the investigation. Corresponding underpaid amounts are to be paid by the partner without delay.
- i) The Parties will act reasonably and cooperate with each other with respect to such reviews. Any on-site visit will take place during regular business hours and will not unreasonably interfere with partner's business operations. For an on-site visit, Hallo Welt! will notify partner in writing at least thirty (30) days in advance of the following.
- j) The partner shall continue to be available to the customer as a contact person with regard to support in the use of the subscriptions or services of Hallo Welt! The type and scope of these support services are agreed individually between the partner and the customer in each case.
- k) The partner will inform Hallo Welt! immediately if he becomes aware of a violation of the EULA by one of his customers. Furthermore, he will support Hallo Welt! in enforcing the EULA against the customer.
- l) During the term of the partner contract, the partner shall also endeavor to generate new customers or leads (prospective customers) with the aim of increasing the sales of the subscriptions.

## 5. Assignment of customers

- a) The partner, as soon as he has resold a subscription to a customer or needs a test license or a test system, registers this customer with Hallo Welt! with all necessary contact data. The necessary contact data includes:
  - a. Company
  - b. Contact person
  - c. Postal address
  - d. Mail address for important service information

The customer is then permanently assigned to the partner.

- b) A customer who is already assigned to a partner can only be assigned to another partner at their own express request.

## 6. Fees, billing, payment and taxes

- a) The partner must pay remuneration for all subscriptions and services purchased from Hallo Welt! according to the respective current price lists, which are made available to the partner by Hallo Welt! or can be viewed by the partner via the [price configurator](#) on the Hallo Welt! website.
- b) The partner receives an invoice from Hallo Welt! for this purpose. The partner must pay all amounts due to Hallo Welt! net within thirty (30) calendar days from the invoice date, unless Hallo Welt! has granted the partner a different payment term in writing.
- c) Decisive for a timely payment is the day of the value date on the business account of Hallo Welt!
- d) The payment obligation of the partner is independent of whether the partner itself receives or has received the payment from its respective customer.
- e) All agreed amounts are exclusive of all taxes. The partner shall pay to Hallo Welt!, in addition to all amounts owed for subscriptions and services, an amount equal to the taxes arising out of or in connection with this contract and paid or payable by Hallo Welt! unless the partner submits to Hallo Welt! a valid tax exemption certificate.
- f) In the event of cross-border transaction costs or if the partner is required by any applicable domestic or foreign law or regulation to withhold or deduct a portion of the payments due to Hallo Welt!, the amount payable to Hallo Welt! shall be increased by the amount necessary for Hallo Welt! to receive an amount equal to the amount it would have received if no withholdings or deductions had been made. The parties will cooperate in good faith to minimize any adverse tax consequences arising from cross-border transactions.
- g) If the partner defaults on its payment obligations, the statutory provisions shall apply. In particular, interest on arrears shall accrue at the statutory rate. The right to claim further damages remains unaffected. In addition, Hallo Welt! can block the customer's access after setting an appropriate deadline until the customer has fulfilled his payment obligations.

## 7. Trademarks, industrial property rights and intellectual property

- a) Hallo Welt! is the owner of a word mark "Blue Spice", which is valid both in Germany (registered at the German Patent and Trademark Office under the registration number 302010038832) and in the territory of the IR trademark (registered at the World Intellectual Property Organization (WIPO) under the registration number 1076656).
- b) Hallo Welt! grants the partner a non-exclusive, non-transferable, royalty-free and revocable license for the duration of the partner program to use the BlueSpice trademarks in their respective area of application and in connection with the marketing and distribution of BlueSpice subscriptions and services. There is no right to grant sublicenses. Any other use of BlueSpice trademarks is not permitted
- c) Should the goodwill that arises from the partner's use of the BlueSpice trademarks increase, this will exclusively benefit Hallo Welt! The partner does not acquire any right, title or interest in the BlueSpice trademarks or the goodwill associated with them, other than the right to use the BlueSpice trademarks in accordance with the partner program.
- d) The partner shall not use the partner program to directly or indirectly create a competitive offer. The partner bindingly declares that it will not use the subscription services for a new distribution of the software that is the subject matter of the contract, promote or support another distribution, or act directly or indirectly in an advisory capacity for this purpose. These obligations apply worldwide and for the entire duration of the partner contract. However, the contracting parties may stipulate exceptions to this by contract.
- e) The partner will not challenge the validity of the BlueSpice trademarks or assist anyone in challenging their validity. Partner agrees not to apply for registration of a BlueSpice trademark or domain name that includes a BlueSpice trademark, and not to use or register any trade name, company, trademark, service mark, slogan, logo, or domain name that is confusingly similar to or references a BlueSpice trade name, trademark, or service mark during or after the term of the partner program.
- f) The partner is not entitled to remove copyright notices, logos, license terms or other references to existing intellectual property rights of Hallo Welt! in the software or in advertising materials or to attach its own copyright notices.
- g) Unless expressly agreed otherwise, the present contract neither expressly nor tacitly grants rights or licenses to use trade names, service marks or trademarks that are either the property of Hallo Welt!, the customer, the partner or the property of third parties. This includes in particular the passing on of the software using the trademarks of Hallo Welt!.
- h) The partner may not disparage BlueSpice, BlueSpice brands or products and services of Hallo Welt!.
- i) Hallo Welt! reserves all rights not expressly granted in this contract and all rights not expressly granted to Hallo Welt! products and services.
- j) The contracting parties agree that the benefit of subscribing to open source software lies in the rapid availability and openness of product improvements, updates and new developments in the ecosystem of the software. Therefore, Hallo Welt! is entitled to exploit its technical know-how, developed ideas, methods, concepts, structures, procedures,

inventions, developments, processes, discoveries, further developments and other information and materials without accountability in any appropriate form, including for itself and its customers.

- k) However, the contracting parties shall not translate, edit, change their arrangement or make other edits including error corrections to protected intellectual property of the respective other contracting party without agreement. The contracting parties shall also not pass on protected contractual products or protected intellectual property of the respective other contracting party to third parties. Explicitly not to be exploited are all those information and data that fall under the statutory data protection provisions (e.g. personal data, customer data and content, trade secrets). Also excluded are developments and contents whose use has been excluded by both contracting parties in a special written agreement (e.g. for developing a new business idea).

## 8. Data protection and privacy

- a) The contractual partners undertake to comply at all times with the provisions of all domestic and foreign laws and regulations on data protection, data security and privacy for which they are obliged and which arise from the partnership; these are in particular the provisions of the German Federal Data Protection Act (BDSG) and the EU General Data Protection Regulation (EU-GDPR).
- b) If the partner processes personal data within the context of this contractual relationship, he is responsible for compliance with data protection regulations. Hallo Welt! will only process the data transmitted by the partner within the framework of the partner's instructions. A transfer of data to third parties – except in the case of official orders – will not take place without the consent of the partner. In the case of official orders to pass on personal data, Hallo Welt! will immediately inform the respective party concerned.
- c) The parties undertake to maintain secrecy about all confidential processes, in particular business or trade secrets of the other contracting party or its customers, which come to their knowledge in the course of the preparation, execution and fulfillment of this contract, and to neither disclose nor exploit them in any other way, unless otherwise contractually agreed.
- d) Trade and business secrets are all facts, circumstances and processes relating to the enterprise of the respective contracting party which are not in the public domain but are only accessible to a limited circle of persons and in the non-disclosure of which the respective contracting party has a legitimate interest.
- e) This duty of confidentiality applies to any unauthorized third parties, i.e. also to unauthorized employees both own and those of the contractual partner, unless the disclosure of information is necessary for the proper fulfillment of the contractual obligations of Hallo Welt! In cases of doubt, the affected party is obligated to ask the contractual partner for consent prior to such disclosure.
- f) This confidentiality obligation shall remain in force even after termination of the partner contract.

- g) Both contracting parties undertake to oblige all employees, subcontractors, service providers and affiliated companies and to comply with the agreement in accordance with section 8 lit. a) to f).

## 9. Compliance

Partner shall, at its own expense, obtain all permits and licenses required in connection with the performance of this contract and shall comply with all applicable laws, rules and regulations in the performance of the partner contract. Without limiting the generality of the foregoing, partner will comply with all applicable export laws.

## 10. Rights of use

The partner shall in each case receive the rights of use resulting from the licenses of the subscribed software. The partner shall be notified of the respective software license when the offer is submitted.

## 11. Warranty

With regard to the warranty, the regulations of the subscription contract apply, insofar as the partner purchases a subscription. No warranty is assumed for services provided by Hallo Welt!

## 12. Liability

- a) Hallo Welt! is liable for damages caused intentionally and by gross negligence. Hallo Welt! is liable for damages caused by slight negligence only in case of violation of an obligation, the fulfillment of which enables the proper execution of the contract in the first place and on the compliance of which the customer may regularly rely (cardinal obligation) as well as for damages resulting from injury to life, body or health.
- b) The liability of Hallo Welt! for claims for damages of the customer regarding damages caused by slight negligence is limited to the amount of the foreseeable damage, the occurrence of which must typically be expected; however, this liability is limited to a maximum of the sum of the contractually agreed remuneration to be paid in the course of one year.
- c) Hallo Welt! is not liable for a lack of economic success. The parties understand this to mean positive developments of one or more key figures possibly intended by the customer, which provide information about the economic activity in a certain period. Typical key figures are profit, return on investment or shareholder value, but also rationalization or scaling effects.

- d) The above exclusions of liability shall not apply in the event of injury to life, limb and health, or with regard to liability under the German Product Liability Act ("Produkthaftungsgesetz") and liability on the basis of expressly given guarantees.
- e) The aforementioned limitations of liability also apply in favor of the vicarious agents and organs of Hallo Welt!

### 13. Force majeure

- a) Hallo Welt! is released from the obligation to perform under this contract if and to the extent that the non-performance of services is due to the occurrence of circumstances of force majeure after the conclusion of the contract. Circumstances of force majeure include, for example, war, strikes, riots, pandemics, epidemics, expropriations, cardinal changes in law, storms, floods and other natural disasters as well as other circumstances for which Hallo Welt! is not responsible (in particular water ingress, power outages and interruptions or destruction of data-carrying lines).
- b) Each Party shall notify the other Party promptly and in text form of the occurrence of a case of force majeure.

### 14. Term, termination, amendment

- a) The partner contract comes into force – if necessary after the occurrence of the condition precedent – on the date of signing by Hallo Welt! and is concluded for a period of 12 months (**contract year**). It can be terminated by both contracting parties with a notice period of two months to the end of the contract.
- b) If notice of termination is not given or is not given within this period, this contract shall be automatically renewed for a further 12 months in each case.
- c) The right to extraordinary termination for cause remains unaffected. A right to extraordinary termination without notice exists for Hallo Welt! and the partner in particular if the respective other party violates central conditions of this agreement and the violation is not remedied within thirty (30) days after written notification of the violation to the violating party.
- d) Any termination must be in writing. The date of receipt by the respective recipient shall be decisive for the timeliness of the termination.
- e) Upon termination of a partner contract, the existing subscription contracts are transferred to Hallo Welt! Neither this partner contract nor any rights or obligations of the partner are assignable or transferable in whole or in part by the partner without the prior written consent of Hallo Welt! Any attempted assignment, subcontract or other transfer of this contract or of any rights or obligations of the partner under this contract shall be void ab initio and shall be deemed a material breach of this contract.
- f) Termination or expiration of the partnership, for any reason whatsoever, will result in the immediate termination of the partner's participation in all Hallo Welt! programs. Upon such termination or expiration, the partner will immediately cease to refer to himself as a

partner or to use any other title in connection with the Hallo Welt! program and to use such titles in any communication or advertising. He will cease all advertising, current sales) and distribution of subscriptions and services. The use of the BlueSpice trademark must also be discontinued. All fees due shall be remitted to Hallo Welt! within thirty (30) days of any cancellation or termination.

## 15. Final provisions

- a) Should individual provisions of these Terms and Conditions be or become invalid, or should an essential point not be regulated, the validity of the remaining provisions shall remain unaffected. The contracting parties shall endeavor to replace the invalid provision with a provision that comes as close as possible to the intended result, taking into account the interests of both parties, and which the parties would have agreed upon if they had been aware of the invalidity of the provision. The same shall apply to loopholes in the contract of which the parties subsequently become aware.
- b) Subsidiary agreements, amendments and supplements to this contract shall only be valid in writing and with reference to this contract. The formal requirement can only be waived in writing.
- c) The place of performance and jurisdiction for all disputes arising from this contract is the place of business of Hallo Welt! if the customer is a merchant, a legal entity under public law or a special fund under public law.
- d) The law of the Federal Republic of Germany shall apply exclusively to the exclusion of the UN Convention on Contracts for the International Sale of Goods.